

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARK MOSLEY,

Claimant,

vs.

RATHBUN REGIONAL WATER  
ASSOCIATION, INC.,

Employer,

and

DAKOTA TRUCK UNDERWRITERS,

Insurance Carrier,

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5043216

A P P E A L

D E C I S I O N

Head Notes: 1108.50; 1402.40; 1803.1;  
1804; 2206; 2501; 2502;  
2907; 3202; 4000.2; 5-9998

Defendants Rathbun Regional Water Association, Inc., employer, and its insurer, Dakota Truck Underwriters, appeal from a review-reopening decision filed on September 20, 2019. Claimant Mark Mosley cross-appeals. Defendant Second Injury Fund of Iowa (the Fund) responds to the appeal. The case was heard on April 5, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 16, 2018.

On November 23, 2011, claimant sustained the work-related injury which is at issue in this matter. In the underlying arbitration decision filed in this case on January 15, 2015, a deputy commissioner found claimant's work-related left knee injury aggravated his pre-existing osteoarthritis in his right hip and also aggravated pre-existing conditions in his left foot and left ankle. In the arbitration decision, the deputy commissioner found that as of the time of the arbitration hearing, claimant was not at maximum medical improvement (MMI) for his left knee, for his left foot and ankle, and for his right hip. The deputy commissioner found claimant was entitled to receive a running award of healing period benefits. The deputy commissioner also found the Fund had no liability for the work injury. On appeal to the workers' compensation commissioner, the arbitration decision was upheld in its entirety, with the exception that the commissioner found it was premature for the deputy commissioner to find the Fund had no liability for the work injury. The August 30, 2016, appeal decision was not appealed to the district court.

On March 10, 2017, claimant filed a review-reopening petition to address the issue of the extent of his permanent disability resulting from the work injury. Claimant asserted his permanent disability from the work injury extends beyond his left lower extremity into his body as a whole and is industrial disability. Claimant asserted he is entitled to receive permanent total disability benefits from defendants employer and insurer. Defendants employer and insurer asserted claimant's permanent disability from the work injury is confined to his left lower extremity and claimant is entitled to receive scheduled member disability benefits only from defendants employer and insurer. Claimant asserted if it was found his permanent disability from the work injury is scheduled only, he is entitled to receive permanent total disability benefits from the Fund. The Fund asserted it has no liability because claimant's permanent disability is industrial. Claimant asserted he is entitled to receive penalty benefits from defendants employer and insurer for an unreasonable failure to pay weekly benefits. Claimant asserted that pursuant to Iowa Code section 85.39, he is entitled to receive reimbursement from defendants employer and insurer in the amount of \$3,107.90 for the cost of the independent medical evaluation (IME) of claimant performed by John Kuhnlein, D.O., on July 12, 2013. The review-reopening action proceeded to hearing on April 5, 2018.

On September 20, 2019, a deputy workers' compensation commissioner issued a review-reopening decision in this matter finding claimant carried his burden of proof to establish he is at MMI for the work injury. The deputy commissioner found claimant sustained permanent disability of his body as whole, involving his left knee, his left foot and ankle, his right hip and his low back, as a result of the work injury. The deputy commissioner found claimant is permanently and totally disabled under the traditional industrial disability analysis as result of the work injury. The deputy commissioner found claimant is entitled to receive permanent total disability benefits from defendants employer and insurer commencing on the date of injury, with a credit for all benefits previously paid. The deputy commissioner found claimant is not entitled to receive benefits from the Fund because claimant's permanent disability extends beyond his left lower extremity into his body as a whole. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendants employer and insurer. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants employer and insurer for the cost of Dr. Kuhnlein's July 12, 2013, IME. The deputy commissioner ordered defendants employer and insurer to pay claimant's costs of the review-reopening proceeding in the amount of \$2,690.00.

Defendants employer and insurer assert on appeal that the deputy commissioner erred in finding claimant is at MMI for the work injury. Defendants employer and insurer assert the deputy commissioner erred in finding claimant proved his permanent disability from the work injury extends beyond his left lower extremity into his body as a whole and is industrial disability. Defendants employer and insurer assert it should be found on appeal that claimant's permanent disability from the work injury is confined to his left lower extremity and that claimant is entitled to receive scheduled member disability benefits only from defendants employer and insurer. Defendants employer

and insurer assert the deputy commissioner erred in awarding claimant permanent total disability benefits. Defendants employer and insurer assert if it is found on appeal that claimant sustained an injury to his body as a whole, the award of permanent total disability should be reversed and the award for industrial disability should be reduced substantially.

Claimant asserts on cross-appeal that if it is found claimant's permanent disability is confined to his left lower extremity, it should also be found claimant is entitled to receive permanent total disability benefits from the Fund. Claimant also asserts on cross-appeal that the deputy commissioner erred in finding claimant is not entitled to receive penalty benefits from defendants employer and insurer.

The Fund asserts on appeal that the review-reopening decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed review-reopening decision filed on September 20, 2019, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of the issues raised in the review-reopening proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that claimant carried his burden of proof to establish he is at MMI for the November 23, 2011, work injury. I affirm the deputy commissioner's finding that claimant sustained permanent disability of his body as whole, involving his left knee, his left foot and ankle, his right hip and his low back, as a result of the work injury. I affirm the deputy commissioner's finding that claimant is permanently and totally disabled under the traditional industrial disability analysis as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive permanent total disability benefits from defendants employer and insurer commencing on the date of injury, with a credit for all benefits previously paid. I affirm the deputy commissioner's finding that claimant is not entitled to receive benefits from the Fund in this matter because claimant's permanent disability for the work injury extends beyond his left lower extremity into his body as a whole. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits from defendants employer and insurer. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants employer and insurer for the cost of Dr. Kuhnlein's July 12, 2013, IME. I

affirm the deputy commissioner's order that defendants employer and insurer pay claimant's costs of the review-reopening proceeding in the amount of \$2,690.00.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

#### ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on September 20, 2019, is affirmed in its entirety.

Defendants employer and insurer shall pay claimant permanent total disability benefits at the weekly rate of nine hundred forty-three and 63/100 dollars (\$943.63) commencing on the date of injury.

Defendants employer and insurer shall receive credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Claimant shall take nothing in this matter from the Second Injury Fund of Iowa.

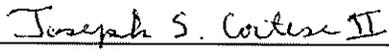
Defendants employer and insurer shall authorize treatment for claimant's low back condition.

Pursuant to Iowa Code section 85.39, defendants employer and insurer shall reimburse claimant in the amount of three thousand one hundred seven and 90/100 dollars (\$3,107.90) for the cost of Dr. Kuhnlein's July 12, 2013, IME.

Pursuant to rule 876 IAC 4.33, defendants employer and insurer shall pay claimant's costs of the arbitration proceeding in the amount of two thousand six hundred ninety and 00/100 dollars (\$2,690.00), and defendants employer and insurer shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants employer and insurer shall file subsequent reports of injury as required by this agency.

Signed and filed on this 17<sup>th</sup> day of July, 2020.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Corey J. L. Walker (via WCES)

Charles A. Blades (via WCES)

Sasha Monthei (via WCES)

Sarah Christine Timco (via WCES)